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# S and F Supply v. Zions First National Bank : Unknown

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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S & F SUPPLY, a Utah )  
corporation, et al., )

Plaintiffs, )

vs. )

ZIONS FIRST NATIONAL BANK, )  
a National Association, )

Intervening Plaintiff, )

vs. )

S. CRAIG HUNTER, )

Defendant. )

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Case No. 12686

ABSTRACT OF RECORD

FILED  
JAN 15 1974

I. PLEADINGS

COMPLAINT OF S & F SUPPLY COMPANY: The original plaintiff in this action was S & F SUPPLY COMPANY which filed its Complaint against defendant S. CRAIG HUNTER on June 11, 1970. Plaintiff complained that defendant failed to perform on a contract dated March 9, 1970, for the purchase of certain assets including 10,000 shares of UNIVERSAL LEASING stock. The Complaint also alleges that on March 30, 1970, defendant S. CRAIG HUNTER executed a Promissory Note in the sum of \$133,500.00 payable to Zions First National Bank as security for the amount owing under the contract. It was alleged that both the note and the contract were in default and the sum of \$116,581.95 was owing on the obligation. The plaintiff's Complaint also sought an attorney's fee of \$14,000.00, plus interest and costs.

DEFENDANT'S AMENDED ANSWER & COUNTER-CLAIM: Defendant answered and counter-claimed asserting that plaintiff in association with others induced defendant to purchase the shares of UNIVERSAL LEASING stock by knowingly and willfully omitting to represent to defendant certain material facts in violation of Sub-Section "b", of §61-1-22, Utah Code Ann. 1953 as amended, and that defendant agreed to purchase said stock as a result of plaintiff's fraudulent omissions. In the Answer,

defendant admitted signing both the agreement and the promissory note, but asserted lack of performance and lack of consideration as defenses to the action. In the Counterclaim, defendant also alleged that plaintiffs had fraudulently induced the defendant into entering into the contract and asked for damages in the sum of \$90,000.00, plus attorney's fees and costs.

INTERVENOR'S COMPLAINT: On November 18, 1970, Zions First National Bank moved to intervene as an intervening plaintiff in this matter, which Motion was granted on November 30, 1960. Intervening plaintiff complained as follows:

1. It loaned plaintiff S&F Supply Company \$200,000.00. The loan was secured by assignment to the Bank of certain assets of the plaintiff and the loan guarantors, including 10,000 shares of stock of UNIVERSAL LEASING COMPANY. When plaintiff defaulted, the Bank, SBA and the plaintiffs agreed that plaintiff could sell the secured assets and apply the proceeds to the payment of the loan.

2. Small Business Administration (SBA) participated in the loan to the extent of 75 percent. The stock sold to Hunter under the contract dated March 9, 1970, was pledged as security on the loan.

3. Since the SBA loan was in default, the bank as security holder was the real party in interest.

4. The bank was induced by Hunter through misrepresentations to release to him the Universal Leasing stock purchased under the March 9, 1969, contract before it was paid for.

5. It was further alleged that intervenor signed a promissory note. This note was also used as a basis for recovery in this action.

DEFENDANT'S ANSWER TO INTERVENOR'S COMPLAINING COUNTER-CLAIM:

Defendant answered Intervening Plaintiff's Complaint and counter-claimed as follows:

1. That the officers at Zions First National Bank who dealt with defendant were intimately involved as officers and/or agents in the business ventures of plaintiffs and of the Souvalls and were working with and assisting the Souvalls to induce defendant to purchase the stock so that the intervening plaintiff's

loan would be paid off by defendant purchasing the stock.

2. That intervening plaintiff knew the stock was worthless and knew the poor financial condition of Universal Leasing.

3. That defendant was induced to purchase the stock through false financial statements which were presented to the defendant by officers of intervening plaintiff.

4. And that all of the financial information about Universal Leasing which was given to defendant by intervening plaintiff failed to give defendant a true and accurate picture of the financial condition of Universal Leasing.

Said answer to intervenor's Complaint and Counter-claim was filed by defendant on December 30, 1970.

PLAINTIFF'S AMENDED COMPLAINT AND REPLY TO COUNTERCLAIM:

On March 22, 1971, plaintiffs S & F SUPPLY COMPANY, Burger-In-the-Round, Andrew Souvall, Toulia P. Souvall, Peter W. Souvall, Mary Souvall, as plaintiffs, filed an amended complaint and reply to defendant's counter-claim alleging detailed facts and circumstances leading up to the execution of the agreement and promissory note upon which the suit was based and setting forth the nature of defendant's default and failure to perform his obligations required by those documents. The reply to the counter-claim generally denied the allegations of the complaint and asserted the defense of estoppel.

DEFENDANT'S ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM:

In his answer to the amended counterclaim, the defendant admitted that he agreed to purchase 10,000 shares of stock of the Universal Leasing Company. His counterclaim alleged as follows:

1. That the plaintiffs as agents and officers and also as individuals deceived defendant and induced defendant to purchase the stock of Universal Leasing by failing to represent the serious financial difficulty of the company.

2. That defendant purchased the stock as a result of a scheme, artifice or device to defraud within the meaning of §61-1-22, Utah Code Anno. as amended.

3. That defendant is entitled to damages and attorney's fees in the amount of \$90,000.00, plus interest.

II. STATEMENT OF THE COURT, OPENING STATEMENTS AND TESTIMONY, September 7, 1971.

3- (217) Following the impaneling of the jury, the court called  
7 (221) counsel into chambers for the purpose of making a record of the manner in which the jury was selected. The record was made whereupon certain comments were made by counsel and the court about the jury. The court commented "I know that guy that said they didn't keep their records straight, Brother, I've never found the bank was wrong yet. I have been wrong but not the bank."

OPENING STATEMENT:

ALVIN SMITH for Plaintiffs:

13- (227) The Souvall brothers, Peter and Andrew, were the principal  
16 (230) owners and were the presidents of S&F Supply Company and Burger-In-The-Round. They borrowed on behalf of the corporations \$200,000 from Zions First National Bank and the Small Business Administration (SBA). The SBA required that the loan be secured by corporate assets as well as personal assets of the Souvall brothers. The corporations filed for bankruptcy and the Souvall brothers were called upon to make good the loan. The Souvall brothers took certain steps to liquidate the corporate assets which were pledged on the loan so that they could save their own personal assets. One of the assets that was pledged on the loan was certain stock in a company called Universal Leasing Company. Mr. Hunter approached the Souvalls and expressed an interest in acquiring the Universal Leasing Company stock. Negotiations proceeded and finally March 9, 1970, a written agreement was executed whereby certain assets were sold by the corporations and by the Souvall brothers to Mr. Hunter for the sum of \$133,500. The time came for payment by Mr. Hunter and he asked for an extension of time. On March 31, 1970, after which time

the payment was due, Mr. Hunter went to the bank who was holding the stock in Universal Leasing Company as collateral on the loan and induced the bank to release the stock to him by signing a Promissory Note for \$133,500. This was done without the then knowledge of the Souvall brothers. Mr. Hunter paid the note down to \$80,000 and refused to pay any more. The Souvalls fully performed their part of the agreement and Mr. Hunter defrauded them. His actions caused additional damage to the Souvalls and they claim that they are not only entitled to the balance on the purchase price of the collateral but also to be paid for the damages which he caused them.

OPENING STATEMENT:

RICHARD H. NEBEKER for Intervening Plaintiffs:

16- (230) The loan with Zions and the SBA was explained. The SBA  
19 (233) loan was made in the summer of 1969. After the loan became in default in December of 1969, the SBA, the bank, and the Souvalls met and it was agreed that the Souvalls should attempt to sell the collateral and apply the money on the loan which was owed to the bank. Seventy-five percent of the money belonged to the SBA. Two restaurant locations were sold and the proceeds were applied to reduce the balance of the loan. In the middle of February 1970, Mr. Hunter came to the bank and asked the officers about the sale of the stock. The officers sent him to the souvalls and their attorney to work out the negotiations. The details of the agreement were worked out after many negotiating sessions. Thereafter Mr. Hunter came to Mr. Bennett of the bank and asked him to release the stock. Mr. Bennett was reluctant to do so and indicated that it was necessary for Mr. Hunter to pay cash. Mr. Hunter represented that he had New York stocks that he was liquidating and that he would be able to obtain between

\$80,000 and \$90,000 within a week. Based upon that promise and representation, Mr. Bennett released the stock to Mr. Hunter. The bank claims that these representations of Mr. Hunter were fraudulent and that the bank relied upon them in good faith.

OPENING STATEMENT:

WALTER P. FABER, JR. for Defendant:

19- (233) The plaintiffs have alleged that the defendant induced them  
25 (239) into entering into a contract by misrepresentations and fraud. The evidence will show that the defendant did not commit fraud and that the bank and the Souvalls knew very well what they were doing. The Souvalls were in financial trouble and they needed someone to buy their collateral. At least one of the bank officers was a Director and member of the executive committee of the Dinner Table or Burger-In-The-Round. Another officer of the bank was a stockholder of Dinner Table. Defendant had been engaged in the insurance business and in order to offer a more complete service to his customers he obtained a securities license. It was while he was dealing in securities that he learned that the stock of Universal Leasing Corporation was for sale. Both of the Souvalls were stockholders in Universal Leasing Corporation and one of them was a director of that corporation. The bank had made prior loans to Universal Leasing Corporation and also prior loans to Dinner Table and prior loans to the Souvalls. Mr. Hunter talked to the president of Universal Leasing and got two financial statements of the company which showed that it had good assets and no problems. Mr. Hunter then went to the bank to find out about the stock. The bank told him that before they could discuss the matter with him, he would have to receive authorization from the Souvalls. Mr. Hunter went to the Souvalls and



they authorized him to discuss the matter with the bank. Mr. Hunter went back to the bank and was given still another financial statement. Mr. Hunter analyzed the three financial statements which showed an orderly progress in the business of Universal Leasing Corporation. He then entered into negotiations with the Souvalls to buy the stock. Mr. Hunter was only interested in buying the stock but was induced to buy the other assets in order to obtain the stock. This agreement enabled the Souvalls to protect their own personal homes. The bank had several other financial statements on Universal Leasing that they did not convey to Mr. Hunter and which were inconsistent with the financial statements which Mr. Hunter had. Mr. Hunter attempted to sell the stock but found that he needed an up-to-date financial statement before the brokers would handle it for him. That financial statement showed that the one furnished Mr. Hunter by the bank and the other two financial statements which he received from the President of Universal Leasing Corporation were absolutely false. Mr. Hunter refused to pay for the stock and claims that he doesn't owe anything to the bank but under the securities law of the State of Utah the bank was obligated to him for inducing him to purchase securities without telling him the true facts about the financial condition of Universal Leasing Corporation.

PETER W. SOUVALL for Plaintiffs

DIRECT EXAMINATION by Alvin I. Smith:

- 26 (240) Peter Souvall was the president of S & F Supply; Andrew Souvall was the Secretary-Treasurer for S & F Supply Company. S & F Supply Company was engaged in the business of providing restaurant equipment to New Burgers-In-The-Round Restaurants.
- 27 (241) The nature of the business of S & F Supply Company required that the company obtain financing. Some of that financing obtained before August of 1969 was obtained through Zions



First National Bank. In almost all of the cases the financing had to be personally guaranteed with personal assets and collateral.

- 28 (242) Mr. John Langeland, Senior Vice-President of Zions First National Bank and Mr. T. Bowring Woodbury, Vice-President of Zions First National Bank were members of the Board of Directors of S & F Supply Company. They were also officers of the company in November of 1969, and had been such for not quite a year prior thereto.
- 29 (243) Andrew Souvall was President of Burger-In-The-Round. Peter Souvall was Secretary-Treasurer of Burger-In-The Round.
- 30 (244) S & F Supply Company was the supplier of restaurant equipment and supplies to Burger-In-The-Round.
- 31 (245) The Souvalls made application to the Small Business Administration for increased capital. The application was made with the approval of the Boards of Directors of S & F Supply Company and Burger-In-The-Round. The application was a joint application between S & F Supply and Burger-In-The-Round. The Board of Directors for both companies directed Andy and Peter Souvall to talk to Zions First National Bank about the possibility of borrowing \$200,000.00 with the help of the SBA.
- 32 (246) The Souvalls filed the SBA loan application on behalf of S & F Supply Company and Burger-In-The-Round. The first SBA loan application was not accepted.
- 33 (247) When the Souvalls made their application to the SBA, they pledged various corporate assets as security for the loan.
- 34-(248) Numerous corporate assets were listed as assets which  
35 (249) were used to collateralize the SBA loan. In August of 1969, S & F Supply Company agreed to provide other corporate assets to collateralize the loan. The list of property was included in the initial application.

- 36 (250) The loan application was rejected without further collateralization by personal assets of the Souvalls. The personal assets that were used to further collateralize and obtain the loan, were the equity in their homes and 10,000 shares of Universal Leasing stock. With this collateralization the SBA loan for \$200,000.00 was approved and made in August of 1969. All of the assets listed were pledged as security for the loan.
- 37 (251) Peter Souvall was a director of Universal Leasing.
- 38 (252) In December of 1969, both S & F Supply Company and Dinner Table considered going into bankruptcy.
- 39-(253) Don Bennett of Zions First National Bank, their attorney,  
40 (254) Mr. Nebeker, Pete Souvall, and his attorney, Alvin Smith, met with the SBA and agreed to give Souvall free rain to sell the assets except he had to get approval on the bank and SBA on the sales price. Souvall offered to work for the SBA and bank for 6 months at no salary or cost to get the best possible price out of the assets. Petitions in Bankruptcy were filed for both corporations in the Federal Court on February 9 and 10.
- 41 (255) During the month of January, Souvalls proceeded to negotiate and look for other buyers. Souvalls arranged to sell certain real and personal property to E. C. Psarras. To conclude the sale, it was necessary to obtain a disclaimer from the bankruptcy court.
- 42 (256) On March 30, 1970, the Bankruptcy Court entered an order granting leave to foreclose or reclaim to Zions First National Bank and SBA.
- 43-(257) Hunter went to see Souvall and stated that he was interested  
44 (258) in the Universal Leasing Stock and asked if it was for sale. Souvall said the stock was in the possession of Zions First National Bank and suggested that Hunter go to see Don Bennett at Zions First National Bank and make whatever arrangements were necessary. The next thing Souvall heard was that Bennett called Souvall and said

45 (259) Souvall attended a meeting of the stockholders of Universal Leasing Corporation and Rockwell Development or Mining Company, to ratify a merger between the two companies, forming a company known as Universal Rockwell Company. There was a change of stock interest in Universal Leasing.

46 (260) The 10,000 shares of Universal Leasing Company were to become 5,000,300 shares of Universal Rockwell stock. The Souvalls did not exchange their shares of Universal Leasing for shares of Universal Rockwell, and in February (1970), the Souvall Brothers were still owners of 10,000 shares of Universal Leasing Company stock. They had signed stock powers to the bank, which stock powers had been pledged as collateral to the bank. The stock certificates were endorsed in blank.

47-(261) Bennett told Souvall that Hunter was interested in  
49 (263) purchasing the Universal Leasing stock and Souvall told Bennett to have Hunter bring his attorney and go and see Alvin Smith. Hunter followed the instructions and Smith sent Hunter to see Peter Souvall. Souvall suggested that it would be a good idea to try to lump all the assets into one sale, hoping that with the pending sales the Souvalls would recover sufficient money to pay the bank and SBA and to salvage his home.

Souvall met several times with defendant Craig Hunter and a tentative agreement was worked out for the sale of stock and other assets to the defendant (appellant). The final agreement was for \$133,500.00. Souvall told Hunter that they had a pending sale to Psarras in which Psarras would receive certain of the assets for \$35,000. He told Hunter that they had agreed on a firm price of \$35,000.00 but Psarras required a little time to come up with the funds. Souvall and Hunter reviewed the inventory of assets. Hunter was quite anxious to acquire the

Universal Leasing stock. It was pointed out to Mr. Hunter

subject to getting a disclaimer of those assets from the Bankruptcy Court.

- 50-(264) Hunter said the stock would have more value to him if  
51 (265) the stock was freed up. Peter and Andy Souvall, Nebeker, the bank's attorney, Don Bennett representing Zions Bank, Alvin Smith and Robert Baldwin, Souvall's attorneys, met with Alex Walker, attorney at law, retained by Hunter, to write an opinion as to the freeing up of the stock. The meeting took all day, and Mr. Walker asked questions about a change of circumstances since acquiring the stock. The Souvalls told about their loss of approximately \$400,000.00 in net worth, and signed an affidavit to that effect.
- 52 (266) While Alex Walker was compiling his notes, Don Bennett, Mr. Nebeker, Mr. Robert O. Baldwin, Mr. Smith, and Andy and Pete Souvall had another meeting with Hunter in one of the other offices. After negotiating back and forth and after a bit of discussing, the purchase price of \$133,500.00 was agreed upon and Souvall instructed Alvin Smith to draw up the contract which is exhibit 3-P.
- 53 (267) Exhibit 3-P was received in evidence. It was dated March 9, 1970.
- 55 (269) The contract price was \$133,500.00 which was to be paid by Cashier's Check or Bank Draft. The contract was to be closed on March 24, 1970.
- 57 (271) Souvall had some prospective purchasers for the inventory. Souvall met several times with Hunter and/or his representatives and prospective inventory purchasers that Souvall and Hunter found. Pete Souvall was anxious to help Mr. Hunter liquidate the inventory. They liquidated a considerable amount of inventory in March and April.
- 58-(272) One of the assets was channeled through Psarras back to  
59 (273) Alvin Smith as part of his attorney's fees. The items Psarras ended up purchasing went from S & F Supply Company to Hunter to Psarras for \$35,000.

- 61 (275) In May (1970), defendant Hunter called Souvall and wanted to see him at his office in Salt Lake City, Utah. They met at 9:00 in the evening. Mr. Hunter indicated that he was trying to get control of the Universal Leasing Company. Mr. Hunter was extremely enthusiastic about his plans.
- 63 (277) The bank foreclosed on the homes of the Souvall brothers and also the condominium. The first time that Pete Souvall knew that Mr. Hunter claimed he had been misled was after Mr. Souvall filed suit. Souvall believed that the amount due on the note to the bank and the SBA at the time of trial was \$80,000. The bank has served notice upon Pete Souvall that if they cannot get the money from anywhere else, they will look to him for payment. The Souvalls have received no releases from the bank or the SBA.
- 64 (278) Souvall never authorized delivery to Mr. Hunter of the Universal Leasing Corporation stock. He was never asked to authorize it. He was shocked when he found out that the certificates had been released without payment of funds and without being notified what the sale price was. When he did check with the bank they told him that Hunter had signed a Promissory Note in the amount of \$135,500 which made Souvall feel quite comfortable. Hunter had mentioned that he had some New York Exchange listed stocks with which he was going to liquidate the amount owed on the Promissory Note.
- 65 (279) Souvall appreciated the fact that Hunter hadn't liquidated them because the market was bad. Souvall learned that in a meeting with John Langeland, Alvin Smith and Craig Hunter that took place in John Langeland's office.
- 70- (284) The agreement was that Hunter was to pay \$133,500 by  
71 (285) March 24, 1970. This payment was to be made to Zions First National Bank. Souvall made some sales of the

inventory. It was mutually understood that the receipts from the sale of the equipment were to be turned over to Hunter or the bank. Souvall took it upon himself to have all the monies he received from the sale of the inventory delivered to the bank in Hunter's name. Zions First National Bank handled the accounting of the funds received from the sale of the inventory.

DIRECT EXAMINATION BY Richard H. Nebeker:

72 (286) One of the conditions of the agreement of the sale of the assets to Mr. Hunter was that the shares of Universal Leasing Company be made free trading stock.

73 (287) Mr. Souvall acquired the stock of Universal Leasing on March 27, 1969. A copy of that stock certificate was identified and received into evidence as exhibit 5-P. The stock certificate had an investment legend upon it. The reason the investment legend was placed upon it was that Mr. Eames, President of Universal Leasing, did not want the stock going on to the market and requested that Souvalls sign an investment agreement to hold it for a unlimited period of time.

74 (288)

75-(289)

The Souvall stock was investment stock. Mr. Souvall advised Mr. Hunter that it was restricted stock. The certificate for 5,000 shares issued to Andrew Souvall was also restricted stock. Mr. Hunter secured free trading shares in Universal Rockwell when he exchanged his shares of Universal Leasing Corporation. Mr. Souvall identified a plan of reorganization between Rockwell Exploration Company and Universal Leasing Corporation.

76 (290) Rockwell Exploration Company and Universal Leasing Corporation merged and became Universal Rockwell Company. Universal Rockwell was desirous of acquiring 100 percent of the outstanding Universal Leasing stock. Exhibit 6-P, which is the merger agreement, was introduced into evidence.

77- (291) The plan of reorganization and merger recited that  
78 (292) the Souvall brothers were owners of 4,530,000 shares of Universal Rockwell Corporation. Mr. Souvall was not made a member of the new Board of Directors in the Universal Rockwell Company.

PETER SOUVALL for plaintiffs:

CROSS-EXAMINATION by Walter P. Faber, Jr.

80 (294) Mr. Peter Souvall was a director of Universal Leasing during the period of time of the merger, although he was not actively serving in that capacity. Mr. Langeland and Mr. T. Bowring Woodbury were directors of S & F Supply Company and Burger-In-The-Round and were also members of the executive committees of both corporations. The executive committees of both corporations consisted of the two Souvall brothers, Mr. Langeland and Mr. Woodbury. S & F Supply Company, the Dinner Table and the Souvall brothers had all made previous loans with Zions First National Bank.

81 (295) Peter Souvall was a Director of Universal Leasing. Peter Souvall was President of S & F Supply Company and his brother Andy Souvall was the President of Dinner Table. They took charge of the business of the companies of which they were President.

82 (296) The SBA loan application was discussed by the Souvalls with the other Directors of S & F Supply Company and Dinner Table, including the officers of Zions First National Bank. The corporations known as S & F Supply and Dinner Table applied for the loan at the Zions Bank.

83- (297) The Board of Directors of Dinner Table and S & F Supply  
84 (298) was composed of the same people. It seemed logical for the corporations to borrow from Zions First National Bank because they were then doing business with the bank.

Plaintiffs may have previously borrowed through Zions Bank, which may have been an SBA loan, to finance equipment at the Provo store. Mr. Langeland and Mr. Woodbury were also



shareholders in S & F Supply Company. It was through the Souvalls that they purchased their shares.

85 (299) The Souvalls had a friendly relationship with Langeland and Woodbury. Exhibit "7-D" to SBA loan application was identified and offered. Counsel for intervening plaintiff objected on the grounds of immateriality and irrelevancy.

86 (300) Counsel for defendant argued that counsel for plaintiffs went into the subject matter of the SBA loan application on direct examination, and that the loan application was relevant to show the association between the bank officers and the Souvalls which association indicated that they were working together to have Mr. Hunter pay off the SBA loan. Counsel for the plaintiffs argued that the only purpose for which testimony on direct examination about the loan application was given was to show that the loan was made and that certain properties were pledged or assigned as part thereof. Mr. Smith further argued that whether or not there was fraud in securing the loan is not a subject of the present lawsuit and should not be required into on cross-examination.

87 (301) The court decided to take the motion under advisement. Mr. Souvall admitted that the restrictive legend on the stock stated that he was not to pledge or hypothecate the certificate. He admitted that this was done when the stock was pledged as security for the loan with Zions Bank. Mr. Souvall stated that the bank was aware of the restrictive legend. Mr. Langeland was in charge of Commercial Loans at Zions First National Bank.

88 (302) Mr. Langeland was the head of the department where they applied for the loans. The bank guided and assisted the Souvalls in the preparation of the SBA loan application. The loan application was discussed with Mr. Langeland as well as with Mr. Bennett.

- 90 (304) The court ruled Exhibit "7-D" inadmissible into evidence. The court felt that the contract, which was the subject of the suit, spoke for itself and that the extraneous matters concerning the SBA application that had occurred several months prior to the contract were not germane to the issues. Thereupon Mr. Faver made a proffer of proof that one of the defendants defenses is the charge of fraud under the Utah Securities Act and that the evidence in relationship to the association between the bank and the other plaintiff is relevant and material to that issue.
- 91 (305) The Court ruled that Exhibit "7-D" could not be used at any point in the trial.
- 92 (306) After one monthly payment the loan became in default.
- 93-(307) Mr. Souvall testified as to various items that were pledged  
97 (311) as collateral on the SBA loan and their value. These included his home, the home of Andrew Souvall, and the condominium. After foreclosure Andrew's home was purchased by a doctor. Peter Souvall's home and the condominium was purchased by his brother, Sam, direct from the bank, and Peter continued to live in his home and Andrew has lived in the condominium.
- 98-(312) Mr. Souvall discussed with the bank the possibility of  
99 (313) selling his home or having the home sold by Zions to Mr. Ernie Psarras and others.
- 100 (314) Mr. Souvall and Mr. Psarras had tentatively agreed to a price of \$35,000 which included the inventory, the California contracts, the property at 3680 Highland Drive, the office equipment and the shares of stock in Universal Leasing. It did not include the homes. This price was agreed to prior to talking to Mr. Hunter.
- 101 (315) Subsequently, those same assets, excluding the Universal shares, were sold to Psarras on the same terms that had been discussed with Psarras prior to the time Souvall met Hunter. It was Souvall's understanding before the contract

that were going to Psarras. The March 9th contract (exhibit 3-P) between Hunter and the Souvalls does not speak of the assets going to Psarras.

102 (316) Souvall had buyers for some of the inventory. Exhibit 4-P was admitted into evidence. It was an assignment in which S & F Supply (Seller) and the Bank (Assignor) made the assignment, dated August 20, 1970, selling to Hunter (buyer), and assigning to Ernie Psarras (assignee) some of the same assets that had been sold to Hunter on March 9, 1970, through a contract of sale. Exhibit 4-P was prepared and executed with the full knowledge of Mr. Hunter.

103-(317) Hunter was to serve as a conduit for the assets going to  
105 (319) Mr. Psarras. As far as the Souvalls were concerned, the only thing that Mr. Hunter was really in substance buying was the stock. Hunter was also buying the inventory which Souvall testified he would do his best to sell. Mr. Hunter anticipated that the stock would be changed to free trading stock on the basis of a change in circumstances of the Souvall brothers.

107-(321) When Souvall talked to Hunter in May 1970 and told Souvall  
108 (322) that he had a number of New York Stocks, John Langeland, Donald Bennett, Richard Nebeker, and Alvin Smith were present. Souvall testified that he did not ask Hunter for a list but was sure that Langeland or Bennett did. Souvall was almost positive that it was at that meeting.

109 (323) If Hunter would have paid for the stock, it would have cleared up Souvall's loan at the bank except for a possible deficiency in interest and attorneys fees.

112-(326) TESTIMONY OF MARK E. EAMES: This testimony was taken  
117 (331) out of order and will be abstracted after the testimony of Mr. Souvall.

118 (332) Pete Souvall was a Director of Universal Leasing until December 1969.

119 (333) Souvalls acquired their Universal Leasing stock by exchanging some of their Dinner Table stock for it.

121 (335) The bank helped the Souvalls obtain disclaimers for the assets from the Bankruptcy Court.

RE-DIRECT EXAMINATION by Mr. Smith:

122 (336) Mr. Souvall corrected an answer which he previously had given in which he indicated that S & F Supply Company was organized in 1968. He testified that that was a mistake and that it was actually organized in 1966. Mr. Souvall also testified that the previous loan that he had had referred to with the SBA to Dinner Table and S & F Supply was actually a loan to Topper Steak House which was guaranteed by the Souvall brothers.

123 (337) The facts set forth in Exhibit 9-D are all true and correct. It was at the request of Mr. Hunter that Mr. Souvall went to Alex Walker.

RE-CROSS EXAMINATION by Mr. Faver.

124 (338) The loan to Topper Steak House was between \$20,000.00 and \$30,000.00. Mr. Hunter was present at the time Souvall was telling Mr. Walker all of the facts that are in the affidavit.

MARK E. EAMES FOR DIRECT EXAMINATION by the Court:

112- (326) The Court examined Mr. Eames regarding his appearance  
117 (331) on a subpoena and the production of certain documents pursuant thereto. The examination took place out of the presence of the jury and was for the purpose of advising Mr. Eames that he was not needed to testify at that time and asked him to make himself available upon further notice.

DONALD M. BENNETT FOR THE PLAINTIFFS

DIRECT EXAMINATION by Richard H. Nebeker

125- (339) Mr. Bennett is a commercial loan officer with Zions  
126 (340) First National Bank and had been during all periods of time material to this trial. Mr. Don Bennett's function

make recommendations for approval on the loans.

Mr. John Langeland was Bennett's supervisor. Mr. Bennett kept the loan file of the plaintiffs and had daily contact with the events concerning the sale of the assets listed on Exhibit 8-P. Mr. Bennett, on behalf of the bank, received payments from Mr. Hunter or Mr. Souvall that were applied to the contract.

127 (341) An itemization of the monies that were received from Hunter and applied to the contract were kept on Exhibit 10-P, which was received in evidence by the court. The exhibit showed that the last payment was made on September 23 when \$35,000.00 was received from Psarras and Mays.

128 (342) The total sum of \$53,252.69 was received by the bank as payments to be applied on the Hunter contract, except for the sum of \$9,000.00 paid by Craig Hunter on April 30 in the form of a Cashier's Check. All of that amount was received from the sale of assets other than the shares of stock of the Universal Leasing Company. The remaining balance due and owing on the contract is \$80,247.31.

129 (343) Mr. Hunter came in to see Mr. Bennett about releasing the stock certificate on March 25, 1970. Exhibit 12-P was received as a receipt that was signed by Craig Hunter showing that the stock certificates had been delivered to him on that date.

130-(344) Mr. Bennett had a conversation with Craig Hunter regarding  
131 (345) the delivery of the stock to Hunter without receiving the cash payment price as specified in the contract. John Langeland, Pete and Andy Souvall, Richard Nebeker and Al Smith were present during that conversation. Mr. Hunter stated that he had New York Stocks that he would sell and that he had funds available to pay for the stock or to pay for the assets he was purchasing. Hunter said that he had to liquidate those stocks and indicated that he would have \$80,000 available within a

week to pay for the stock. On March 25, 1970, he assured

available and that he would have them in a short time.

132- (346) Exhibit 11-P was a Promissory Note in the sum of  
133 (347) \$133,500.00 that was signed by S. Craig Hunter on March 30, 1970. It was received in evidence by the court. The Note was due 31 days after date, which would have been April 31 (1970). From the conversations that Mr. Bennett had with Mr. Hunter about signing the Note, Bennett understood that Hunter signed the Note because he had taken out the assets that he had contracted to purchase without paying for them, and to determine that he would pay interest on his obligation.

DON BENNETT for Plaintiffs:

CROSS-EXAMINATION by Walter P. Faber:

135 (349) Hunter received the stock from Bennett on March 25, 1970, before he paid the balance of the contract due. Bennett stated that that was a very unusual transaction for the bank to make. Mr. Bennett discussed the release of the stock with the bank's attorney, Mr. Nebeker. Mr. Hunter was most anxious to receive the stock. After reviewing what Hunter had told them they decided to release it.

138 (352) Mr. Don Bennett testified that he discussed the execution of the note by Mr. Hunter with Mr. Noall Bennett, Mr. John Langeland and Mr. Nebeker. Those individuals were also aware of the stock transaction. The Promissory Note went out from the bank approximately a week after the stock was released.

DONALD BENNETT for defendant, Adverse Witness:

DIRECT EXAMINATION by Walter P. Faber, Jr.:

141- (355) Prior to January 1970, Universal Leasing had borrowed  
143 (357) funds from the Spanish Fork Branch of Zions First National Bank. Universal Leasing was a customer of the bank and had been since prior to the summer of 1968.

in December 1969 or January 1970. Universal Leasing had loans outstanding at that time. Prior to February, 1970, Zions made loans to Andrew and Peter Souvall personally as well as loans to S & F Supply Company and Dinner Table. Bennett was aware that John Langeland and T. Bowring Woodbury were directors and shareholders of Dinner Table when those loans were made.

144  
(358)

Bennett did not help prepare the proposed exhibit 7-D and did not know anyone who did. Section 3 of the SBA loan application asks for the disclosure of all owners, officers, directors or partners of the loan applicants.

145- (359) Mr. Bennett did not know why Mr. Langeland and Mr. Woodbury  
146 (360) were not listed as directors on the application. Bennett was familiar with the loan itself.

147- (361) A portion of the proceeds from the \$200,000.00 loan went  
148 (362) to pay off a \$23,000.00 SBA loan at Zions, personally guaranteed by the Souvalls, which had been made to Toppers Steak House in Provo. The SBA loan proceeds were also used to pay a \$50,000.00 direct loan from Zions to Toppers Steak House in Provo, also personally guaranteed by the Souvalls. These uses of the loan proceeds were not disclosed in Exhibit 7-D, the SBA Loan application, but there was other correspondence with SBA where these facts were disclosed to them.

149 (363) Bennett testified that the purpose of the \$200,000.00 SBA loan was to finance an increased volume in the business of S & F Supply Company and Dinner Table.

149- (363) Counsel for the defendant attempted to examine the use of  
151 (365) the loan proceeds further. Counsel for the plaintiffs objected and the court sustained the objection.

151 (365) For valuation purposes, the bank relied upon a statement by Mr. John Swensen that he would purchase the 10,000 shares of Universal Leasing stock for \$100,000.00. It was on this basis that the stock was taken as collateral on the SBA loan. The bank relied upon a financial statement



office. Bank officers believed that Mr. Swensen would repurchase the stock if necessary. The bank caused no independent valuation to be made. In December of 1969 the bank learned that Universal Leasing was in serious financial trouble.

153 (367) The bank knew that Universal Leasing was having certain financial difficulties in obtaining financing to purchase restaurant leases that were being generated by Dinner Table. Hunter had asked him if the bank had a financial statement on Universal Leasing but Bennett didn't recall whether or not Hunter received a copy at that time.

155 (369) The date of the financial statement that Bennett discussed with Hunter was August 31, 1969. The bank had two in its possession with the same date.

156 (370) Approximately 5,000,000 shares of lettered Universal Rockwell stock were delivered back to the bank by Dave Brinton for defendant, S. Craig Hunter. That stock was lettered stock while in the opinion of the witness the stock taken from the bank was free trading stock.

DON BENNETT for defendant, Adverse Witness:

CROSS EXAMINATION by Richard H. Nebeker:

157 (371) When Mr. Hunter first approached the bank, he wanted to purchase the loan directly from the bank. He wanted to buy the loan and the assets and assume the whole obligation then owed by S & F Supply Company and Dinner Table.

158 (372) Mr. Hunter asked how much the entire balance on the loan was. At that time, the balance was approximately \$155,000.00. Exhibit 15-P was received.

159 (373) Exhibit 15-P was a letter wherein an offer was made to purchase the Universal Leasing Corporation stock at \$10.00 per share by John C. Swenson at any time the stock was offered for sale. That letter was in the possession of the bank when the SBA loan was made and was used as a basis for evaluation of the value of the shares.

160 (374) Hunter came into the bank and asked bank personnel if they had any financial information on Universal Leasing. Bennett showed and reviewed with Hunter two financial statements, both dated August 31, 1969, which were received as exhibits 13-P and 14-P and explained he did not know which financial statement was correct, if either one of them was correct, because they both had differing figures. These were shown to Mr. Hunter and reviewed with him prior to the time that he agreed to purchase the stock.

161 (375) Bennett also explained to him that Universal Leasing under the merger was dissolved and became wholly owned by Universal Rockwell. This understanding was contrary to the financial statements shown as Exhibits 13-P and 14-P. The net worth shown on the statements varied \$800,000.00.

162 All during their discussions with Mr. Hunter, bank representatives were continually pointing out to him that he needed to determine for himself the value of the stock, because the bank was relying upon other sources for value other than the statements of Universal Leasing. Hunter was cautioned and advised to audit the Company for himself or obtain additional financial information on the Company. Bennett testified that he called Mark Eames to try to determine for himself as to what the value of the Universal Leasing stock would be outside of Mr. Swenson's letter. Exhibit 16 was admitted into evidence.

163- Exhibit 16 is a memo from Don Bennett to their file  
164 relating the substance of a phone call he had with Mark  
TR Eames. It was dated February 27, 1970. Bennett inquired  
(376 & concerning the value of the stock. Eames told Bennett  
377) that the exchange ratio of Universal Leasing stock for Universal Rockwell stock was on the basis of 10,000 shares of Universal Leasing for 4,500,000 shares of Universal Rockwell stock. There was 31,932,000 shares outstanding of which 1,932,000 were free trading. Eames stated that

share and he felt therefore that the investment stock should be worth one cent per share. Eames indicated that was a conservative value and based on their earnings could be worth more. Bennett was also told the August 31, 1969, statement that he had received from the Spanish Fork office was apparently incorrectly prepared and Eames would send him a November 30, 1969, financial statement. Bennett did not receive the November 30, 1969, statement. Bennett did not recall how the promissory note came back to the bank or who brought it back.

165  
(378)

Mr. David Brinton, an associate of Mr. Hunter, on April 21, 1970, brought to Zions First National Bank, 51,188,000 shares of lettered Universal Rockwell Corporation stock. Exhibit 17-P was a receipt that was given to Mr. Brinton on April 21, 1970. It shows that 5,188,000 shares of Universal Rockwell Corporation stock certificate No. 1472, registered in the name of Don G. Timothy was received by the bank. The stock was being offered in lieu of the stock released to Hunter which was part of the assets being sold to Hunter under the agreement between Souvall, et al, and Hunter.

166  
(379)

The bank never received the shares of Universal Rockwell that were registered in the name of Craig Hunter after transfer of the shares that were given to him by the bank. The bank did not forego their right to receive the unlettered stock by accepting the lettered stock. Bennett claimed he had no other information concerning the value of the Universal Rockwell stock other than what Eames had told him and Swenson's letter offer.

167  
(380)

After the lawsuit commenced, Exhibit 18-P was produced by Mr. Hunter. This exhibit was a balance sheet and income statement of Universal Leasing Corporation dated August 31, 1969, which was different from the other two August 31, 1969, statements. Bennett did not know if any

168  
(381)

or all of the August 31, 1969, statements were correct.

DONALD M. BENNETT adverse witness for defendant:

REDIRECT EXAMINATION by Mr. Faber:

169 Bennett identified 13-P and 14-P as being two statements  
(382) in their file at the time he met with Hunter. They both showed that Universal Leasing owned 100 percent of Universal Rockwell.

170 Bennett pointed this out to Hunter.  
(383)

171 Zions had three August 31, 1969, statements, a March 31,  
(384) 1969, and a November 1968, of Universal Leasing Company in its files. One of the August 31, 1969, statements was from Faber. Bennett discussed two of the August 31, 1969, statements with Hunter since Hunter was looking for the most recent information the bank had.

172 In Mr. Bennett's conversation with Mr. Eames, Mr. Bennett  
(385) did not tell Mr. Eames that Mr. Bennett had two different financial statements of Universal Leasing. One of the statements received from the Spanish Fork office was apparently incorrectly prepared. The basis for the inaccuracy was the fact that the statement showed that Universal Leasing owned 100 percent of Universal Rockwell. The first time Bennett saw 18-P was a few weeks before the trial.

174 Bennett discussed with Psarras the idea of Souvalls'  
(387) homes going to Psarras.

September 9, 1971

DONALD M. BENNETT adverse witness for the defendant:

FURTHER REDIRECT EXAMINATION by Mr. Faber:

182 Bennett believes he discussed the August 31, 1969,  
(395) financial statements with Hunter prior to February 28, 1970, possibly as much as two weeks prior.

183 When Hunter first approached Bennett and Langeland to  
(396) inquire after Universal Leasing stock, Bennett told Hunter he would have to talk to the Souvalls. The Souvalls told Bennett that Hunter had talked with them and the Souvalls

told Bennett to give Hunter "whatever information the bank had."

184  
(397)

After Bennett had shown Mr. Hunter the two financial statements both dated August 31, 1969, he did not recall discussing those financial statements with him thereafter. Bennett received Hunter's financial statement in May or June for the first time. The bank had loaned money to Hunter prior to that time without a financial statement.

186  
(399)

After Bennett discussed the two financial statements with Hunter, Bennett learned from Mark Eames that at least one of the August 31, 1969, statements was incorrect. This did not concern Bennett because the bank was relying on the evaluation offer letter received from Mr. Swenson. Bennett did not ask Eames which August 31, 1969, statement was correct.

187  
(400)

The bank valued the stock at \$100,000.00 at the time they received Swenson's letter. Swenson was never called upon to buy the stock. Bennett was not aware that Swenson had decided not to buy the stock.

188  
(401)

Bennett discussed with other bank officers whether the bank should call upon Mr. Swenson to buy the stock, which discussions took place when the loan was in default. Had Swenson's offer to purchase the stock been accepted the bank officers assumed \$100,000.00 actually would have been realized from the sale. Hunter's 1970 May or June financial statement did not contain any New York Stock Exchange listed stocks.

189  
(402)

During the course of dealings with Hunter the bank had numerous discussions with the plaintiff Souvall but did not discuss which assets would go to Hunter or Psarras, but knew it from the agreement. Prior to the agreement, Bennett was aware that Psarras was a prospective purchaser and had discussed that fact with Langeland.

190  
(403)

Bennett knew Universal Leasing was not able to perform on a contract in which Universal Leasing was to purchase the lease that Dinner Table had generated in California. Bennett was not concerned when Eames mentioned that one of the August 31, 1969, statements was false because Bennett had discussed all of the statements with Hunter and pointed these things out to him. The value Eames indicated the stock was worth made Bennett feel Hunter was getting more than ample value. The differences in the August 31, 1969, financial statements were discussed between Mr. Langeland and Mr. Bennett.

DON BENNETT adverse witness for defendant:

RECROSS-EXAMINATION by Mr. Nebeker:

191  
(404)

4,500,000 shares of stock at 5 cents per share would be worth \$225,000.00.

192  
(405)

Bennett did not recall whether or not Hunter had asked him for any information that he refused to give Hunter. Bennett did think he answered every question that Hunter asked him about what the Bank had in its file concerning the Universal Leasing Stock. Hunter was aware that Universal Leasing had been taken over by Universal Rockwell and that the stock needed to be transferred to the new name. The transfer of the shares into Universal Rockwell is not based on the financial statement dated August 31, 1969 (Of Universal Leasing).

193  
(406)

The bank had no financial statements of Universal Rockwell in its file at the time it was talking to Hunter.

DONALD M. BENNETT adverse witness for defendant:

RECROSS-EXAMINATION by Alvin I. Smith:

194  
(407)

Hunter gave the bank representative the impression that he had information about the Universal Rockwell Company that would be worthwhile to promote the stock. At one point Hunter asked the bank if they could loan him on his New York listed securities a sufficient amount to

195 The August 31, 1969, financial statements (13-P and 14-P)  
(408) of Universal Leasing were sent up to the bank as  
information on the additional financing that Universal Leasing was looking for at the Spanish Fork office. The statements were not part of the SBA loan fund but came out of another file. The bank never told the Souvalls they had any information on Universal Leasing.

DONALD M. BENNETT for defendant Adverse Witness:

REDIRECT EXAMINATION by Walker P. Faber, Jr.:

197 Bennett testified that he had no reason not to accept  
(410) Eames valuation of the stock even though he had two diverse financial statements on Universal Leasing since Bennett didn't know whether or not Eames prepared them.

198 The bank was considering making an offer to Mr. Swenson  
(411) prior to the time they first talked to Hunter.

198- The assets were not the bank's assets. They belonged to  
199 the parties who pledged them for security on the loan.  
(412) The bank was relying on Souvalls in finding purchasers for these assets. They were Souvall's assets, and the Souvall companies' assets; therefore, when Mr. Hunter appeared, the bank no longer gave any thought to offering it to Mr. Swenson. The bank considered the offer from John Swenson to buy the stock for \$100,000 to be a good offer. Mr. Hunter was very anxious to receive the stock. He was trying to get it out of the Bankruptcy Court so that the bank could sell it to him, and there was a lot of pressure in trying to free up the stock so Hunter could have it.

199- Psarras was willing to pay \$35,000.00 for some of the  
200 assets pledged on the loan (excluding some of the  
(412 & inventory and the Universal Leasing Stock). The offer  
413) from Swenson for the stock was for \$100,000.00. In addition to the \$135,000 they would have received from Swenson and Psarras, they would have had the additional inventory which they could sell. The bank had no



exercise the option in Swenson's letter.

201  
(414)

Prior to the agreement the bank said to Hunter that if he was not going to be able to sell his stock, would he provide them with the information so they could determine whether or not to make a loan to him. The bank had loaned Hunter \$25,000 within the two months prior to the agreement based on securities or other assets Hunter pledged.

PETER W. SOUVALL for defendant:

DIRECT EXAMINATION by Walter P. Faber, Jr.:

202 (415) Exhibit 15-P, an offer letter from John Swenson to purchase  
203 (416)

10,000 shares of Universal Leasing stock for \$100,000.00 was obtained in May of 1969 by the Souvalls for the bank. Souvall never seriously considered the offer and after he obtained it, he never spoke with Swenson about it again. The reason for getting the letter was to substantiate the value of the stock for the bank to determine whether or not it was good collateral. It was considered to be a bona fide offer. He considered this as a letter to substantiate the value of the stock.

204  
(417)

Souvall did not recall ever discussing the offer with Langeland or Bennett. Souvall was a director of Universal Leasing in December of 1969.

205  
(418)

Universal Leasing financed some equipment for Souvalls' corporations. There was also a sale of Burger-In-The-Round franchises to Universal Leasing. Universal Leasing paid \$50,000.00 to Dinner Table for a Burger-In-The-Round location. They were not able to agree on a location so Universal Leasing was given the exclusive franchise rights for Burger-In-The-Round for California. Souvall testified \$50,000.00 was paid in full to Universal Leasing.

206  
(419)

Mr. Souvall had no idea what the fortunes of Universal Rockwell were. He had heard only rumors regarding the situation of the company.

207        The executive committee of Dinner Table met monthly. He  
(420)       testified further that they met whenever necessary.

208        The executive committee of S & F Supply Company likewise  
(421)       met monthly or more often as necessary. Usually they  
             would have the meeting on one of the corporations and  
             immediately thereafter, the meeting of the other. Some-  
             times the business of the two corporations would be  
             intermingled by necessity.

PETER SOUVALL

CROSS-EXAMINATION by Mr. Smith:

208 (421)    Souvall was aware that Swenson was a sizeable stockholder  
209 (422)    and an officer and a director of Universal Leasing at the  
             time Souvall procured the letter from Swenson. Souvall  
             attended a stockholders meeting of Universal Leasing in  
             November or December in which the merger of Universal  
             Leasing and Universal Rockwell was ratified. Swenson also  
             attended the meeting but Souvall never approached Swenson  
210 (423)    on buying the stock. Getting the stock freed for sale was  
211 (424)    one of the conditions of the sale of the stock to  
             Mr. Hunter. Mr. Hunter was quite insistent on this point  
             and he was quite urgent about getting it done.

212 (425)    Hunter did not ask Souvall about the value of the stock  
             and did not ask for any financial statements that Souvall  
             might have of Universal Rockwell. Souvall wondered why  
             Hunter wanted the stock but did not ask.

213        Hunter came to the Souvalls' home to make a deal on the  
(426)       stock.

PETER SOUVALL

REDIRECT EXAMINATION by Mr. Faber:

213 (426)    Pete Souvall felt the value of the equity of his and  
             Andy's homes was far in excess of \$16,500.00.

PETER SOUVALL for defendant:

RECROSS EXAMINATION by Mr. Smith:

JOHN LANGELAND for defendant Adverse Witness:

DIRECT EXAMINATION by Walter P. Faber, Jr.:

216 John Langeland is Senior Vice-President of Zions First  
(429) National Bank.

217 As Senior Vice-President, Mr. Langeland is in charge of  
(430) commercial loans. Mr. Don Bennett worked under  
Mr. Langeland's direction. Langeland testified that he  
was familiar with the \$200,000.00 SBA loan.

219 Payments on the SBA loan were to be monthly payments of  
(432) \$4,798.00.

220 Langeland admitted that he was a director of Dinner Table.  
(433) Langeland testified that he was not a member of the  
executive committee of Dinner Table or S & F Supply Company  
and was not a director of S & F Supply Company. He also  
testified that the customer always has to prepare an SBA  
application. It cannot be prepared by the financial  
institution.

221 Langeland testified that the bank cannot assist in  
(434) preparing an application to the SBA.

223 The Souvalls obtained commercial loans from Zions prior  
(435) to August of 1969. Langeland asked for his release as a  
director several months prior to them releasing him.

224 The bank and the borrower had a meeting with the SBA.  
(436) The bank recommended that the borrower be given an  
opportunity to liquidate the assets because bank  
representatives felt that the borrower could do a much  
better job than a financial institution.

227 The bank did not actively solicit the sale of any assets.  
(437) The borrower was the one who had to consent to the sale  
of the assets.

226 Langeland did not know of anyone who contacted Swenson  
(438) and knew of no reason to respond to Swenson's letter.

229  
(441)

It was pointed out that Mr. Langeland testified in his deposition that Zions First National Bank had attempted to sell some of the Universal Leasing stock. Langeland qualified his testimony as follows: "Well, we attempted to sell. We had an inquiry. We have never gone around and beaten bushes, but, yes, there was another party, and I think I even told Craig Hunter about it, that we had an inquiry from our branch in Spanish Fork on what basis Mr. Swenson down there could purchase the stock of Universal Leasing." Langeland was aware that Zions Bank had received a copy of a Universal Leasing financial statement from the Spanish Fork branch of the bank.

230  
(442)

Langeland could not recall ever discussing the Universal Leasing financial statement received from Spanish Fork with Bennett.

232(444)  
233(445)

In his affidavit of March 9, 1970 (Exhibit 21-D), Langeland stated that the Souvalls had found buyers to buy enough of the assets to liquidate the loan. Langeland testified that Craig Hunter was the most important buyer.

235(447)  
237(449)

Langeland was in on some of the discussions regarding the sale of the assets, and knew that Psarras was to purchase some of the assets which were eventually purchased by Hunter. Langeland was not sure whether Psarras ended up purchasing them from Souvall or Hunter. These discussions involved technical matters about the sale of the assets.

238(450)  
239(451)

Langeland had several conversations with Hunter in February 1970. Langeland remembered that Bennett was nearly always there and sometimes Souvalls and the Souvalls' attorney were there also. Langeland recalled that Hunter came into the bank for the first meeting at 6:00 p.m. in the evening and indicated that he had agreed to buy the whole list of assets and immediately wanted to pay off the note of Dinner Table.

- 240(452) The terms of Exhibit 3-P, the March 9, 1970, contract,  
241(453) were discussed between the bank officers and the Souvalls  
and their attorneys. Zions First National Bank signed the  
contract dated March 9, 1970, evidencing that the bank  
approved the transaction. However, the bank was not a  
party to the agreement.
- 244(456) Langeland met Hunter when he came into the bank to serve  
246(459) as a guarantor on a note about one month before the contract  
was made with Souvall. Langeland discussed with Hunter  
the fact that Psarras was to purchase some of the assets  
through Hunter.
- 247(460) Langeland testified that Zions did not place a value on the  
stock.
- 248(461) At the time of the SBA loan transaction in June, 1969,  
Zions caused to be prepared a letter from Mr. Swenson  
indicating a valuation of \$100,000.00 for 10,000 shares of  
capital stock of Universal Leasing.
- 249(462) Zions asked that the Swenson letter, Exhibit 15-P, be  
written.

JOHN LANGE LAND for defendant, Adverse Witness:

CROSS EXAMINATION by Richard H. Nebeker:

- 250(463) Zions never attempted to sell the stock to Mr. Swenson.  
The Spanish Fork branch inquired of Zions in Salt Lake  
as to what basis upon which the Universal Leasing stock  
could be purchased by Mr. Swenson. Langeland advised  
Hunter that John Swenson wanted to buy the Universal  
Leasing Company stock.
- 251(464) Hunter answered that he was well acquainted with Swenson  
and that in his opinion Swenson had no ability to buy  
his stock.
- 252(465) When Hunter first came to the bank, Langeland asked him  
where he was going to get the money to perform on the  
contract. Hunter said he had enough New York Securities  
to take care of it and that there would be no problem  
for him in following through and fulfilling his

of the background information about the Universal Leasing Company stock. Hunter never told Langeland that he did not have the New York securities. Many months later the information received from Hunter showed that Hunter did not have any New York stocks.

254 Langeland would not have approved and entered into  
(467) Exhibit 3-P if Hunter hadn't told Langeland that he had New York stocks or adequate finances to fulfill the contractual obligation.

JOHN LANGELAND for defendant, Adverse Witness:

CROSS-EXAMINATION by Alvin I. Smith:

255 The Souvalls, the bank and the SBA had a preliminary under-  
(468) standing as to the liquidation of the loan.

257 Bank officer, John Langeland, assured the Souvalls' attorney  
(470) that from the information he had, Hunter was a man of good reputable character and would be able to perform on the contract.

REDIRECT EXAMINATION by Mr. Faber:

258 (471) Langeland reached that conclusion on the basis of the  
259 (472) assurance that Hunter had given him about the New York stocks. The bank was assured repeatedly by Craig Hunter and his attorney, Reed Watkins, that Hunter would be able to perform. Hunter brought a letter to the bank from a Mr. Glenn as proof that he could perform, showing that he could immediately raise \$50,000.00. Mr. Watkins assured the bank that to his knowledge, Mr. Glenn had never defaulted on any of his promises. Mr. Langeland took a personal interest in the whole transaction, from a supervisory standpoint. The bank didn't require a financial statement from Hunter because he had pledged some securities with the bank that demonstrated that Hunter had some financial capability of taking care of the contract with Souvall, et al.

260 Hunter had loans at the bank at the time the contract  
(473) (Exhibit 3-P) was signed. They were secured by stocks.  
Langeland's assurances to Souvalls counsel about Hunter  
were based on Hunter's verbal assurance that he could  
pay for it.

261 The bank approved the March 9, 1970, agreement because  
(474) they thought it was in the best interest of the borrower  
and signed the contract.

262 Hunter exhibited interest in stock. Langeland did nothing  
(475) to discourage Hunter's interest in the stock. He did not  
ask Hunter for a list of his New York securities.

ROBERT DALE APGOOD for defendant:

DIRECT EXAMINATION by Walter P. Faber, Jr.:

264 Mr. Robert Apgood is a CPA, a Professor of accounting at  
(477) Weber State College, and a Ph.D. candidate in accounting.  
He has a BA from BYU and a MA from the University of Utah.

265 (478) Mr. Apgood examined the books of Universal Leasing in the  
266 (479) summer of 1970 and discovered the books had not been posted  
from April 1969 through March 1970.

267 (480) Apgood posted the books and prepared the financial  
statement on the company, Exhibit 24.

268 (481) It was Mr. Apgood's professional opinion that Exhibit 18-P,  
a financial statement of August 31, 1969, was completely  
misleading and false.

269 (482) Mr. Apgood saw Exhibits 13-P and 14-P for the first time  
today. He compared it with the other August 31, 1969,  
financial statement.

270 (483) It is Mr. Apgood's opinion that those two statements were  
likewise just as misleading as the Exhibit 18-P.

ROBERT DALE APGOOD for defendant

CROSS-EXAMINATION by Alvin Smith:

273 (486) Mr. Apgood was not hired as an auditor, only as an  
accountant to take care of the books and make the  
necessary entries for an entire year.

276 (490) Mr. Apgood first came in contact with Universal Rockwell  
278 (492)



- Jerry Timothy, the bookkeeper for the corporation, and with Mark Eames, the President. Mr. Apgood did not know Mr. Hunter at that time. Subsequently, he was told that Mr. Hunter needed a report on the corporation.
- Mr. Apgood's principal consultation was with Mr. Mark Eames.
- 279 Universal Rockwell was a holding company and it owned  
(493) 100 percent of Universal Leasing. Universal Leasing owned Mr. G's Gas and Goodies.
- 280 Mr. Apgood testified that he thought individuals owned  
(494) some additional stock in Mr. G's Gas and Goodies. At the time of his report, he thought it was a 100 percent owned subsidiary, but there had been some changes in the year that had transpired since his report was prepared.
- 281(495) Mr. Apgood testified that he did not know the exact date of the merger of the various companies.
- 282(496) Universal Leasing Company's main business was leasing and it owned stock in a wholly owned subsidiary, Mr. G's Gas and Goodies. At various times it owned other stock. On March 31, 1970, there was another company called North Star Marine which is basically the same as Satellite Navigation Corporation.
- 283(497) Thus, in order to make his report of March 31, 1970, he had to have access of the books and records of four or five companies. These companies were all headquartered in a single office and he had access to these records in preparing his report. There were several merger agreements during the year prior to the audit. The first merger was between Universal Leasing and Dinner Table or S & F Supply Company. There was a merger between Universal Rockwell and Universal Leasing.
- 284(498) Mr. Apgood was not sure of the dates of any of the mergers. Mr. John Swenson was the president of Mr. G's Gas and Goodies which was also merged in.

- 285(499) The valuation of \$150,000.00 placed upon the investment of Mr. G's Gas and Goodies was misleading.
- 286(500) Generally accepted accounting principles for the establishment of valuations were not followed in the establishment of the valuation placed upon the balance sheets of Mr. G's Gas and Goodies.
- 287(501) There is a difference between a certified statement regarding valuation and a statement put out by a company as to what they consider their assets to be. Exhibits 18-P, 23-D, and 22-D were not certified statements. As an accountant advising a client or an investor, Mr. Apgood would not put any credence upon the statements contained in 18-P, 23-D or 22-D.
- 288(502) Approximately two months after he finished his report, Mr. Apgood was hired as an employee of Universal Rockwell. He became president for approximately six weeks. He was hired by Mark Eames to work full time during the summer and then parttime when he returned to his teaching assignment at Weber State College. He was associated with Universal Rockwell until about March of 1971. During this time, Mark Eames continued to run the corporation.
- 289(503) In May of 1970, Mr. Timothy resigned under a mutual understanding with the corporation. Mr. Apgood had discussions with Mr. Hunter.
- 290(504) Mr. Hunter wanted to know the direction the company was going and their plans for the future. While I was with the company, there was no discussion about Mr. Hunter merging certain assets into the company.
- 291(505) Mr. Hunter has never paid me for any services performed in connection with Universal Rockwell or Universal Leasing. I have been paid through the corporations. They are still indebted to me.

September 10, 1971

- 295-(509) The Court discussed the order of witnesses with counsel  
301 (515) in Chambers upon the record. The Court instructed the jury regarding expert witnesses at the request of counsel for the plaintiff.
- 302 (516) Mr. Apgood prepared a trial balance sheet for Universal Leasing as of August 31, 1969.
- 303 (517) Mr. Apgood identified Exhibits 25-P and 26-P as trial balance sheets of Universal Rockwell Corporation for August 1970 and November 1970. This would be the same as Universal Leasing Corporation and the information was taken from Universal Leasing Corporations' books.
- 304 (518) A correction was made and Mr. Apgood stated the trial balances were for August 31, 1969, and November of 1969, rather than 1970. The trial balance sheet identified as 25-P would correspond with the same period as the misleading balance sheet identified as 13-P. The general ledger had been prepared on a consolidated basis including the parent and all of its subsidiary.
- 305 (519) Since no books had been kept it was necessary to go back during the entire year and do the books before the trial balance sheet could be prepared. Mr. Apgood was not sure whether 13-P included all of the subsidiaries or not. His statement that 13-P was misleading was based upon a comparison of it to the prior statements and to his own statement.
- 307 (521) A balance sheet was defined as a listing of economic residuals as of a certain date. Economic residual is defined as something that has economic value as of a given date. It is generally composed of things owned, or assets, amounts owed, or liabilities, and the difference between the two being the net worth.
- 311 (525) To determine book value of stock, which is relatively meaningless, you divide the net worth of the number of shares outstanding. Balance sheets may be used to

used for the purpose of borrowing at financial institutions or obtaining private capital. Other reasons for preparing balance sheets were explained. The difference between a certified statement prepared by CPA and one that is not is that a CPA is bound to follow the rules set forth by the American Institute of Certified Public Accountants. Other balance sheets may contain any information which the person who prepared them chooses to put in. He can put in anything. There are no guidelines whatsoever for an accountant to follow when he is not doing a certified public audit. One of the main differences is that a certified audit normally requires to account for items at cost. Non-certified statements may show value at market-value, present value of anticipated flow of future earnings, liquidations values or any other different methods of obtaining value.

313 (527) A determination of whether or not Exhibit 13-P or 14-P was right or wrong would depend upon the purpose for which it was issued. These exhibits were misleading for many purposes. For the purpose of income tax it would be misleading. For the purpose of the Securities and Exchange Commission it would be misleading. For the purpose of internal management and decision-making it would depend upon management.

314 (528) A false statement is one that is incorrect. There is a difference between a false statement and a fraudulent statement.

315 (529) The books of the corporation showed \$70,000.00 in land and upon investigation I found that it was not owned by the corporation. It was found that at least a portion of it was being rented and the value of a leasehold should not be represented like it was.

316 (530) A leasehold is rarely represented as a value on a balance sheet.

317 Mr. Apgood did not examine the books and records of  
(530) Dinner Table because he was not allowed to.

318 Universal Leasing had leases to Dinner Table on its  
(531) books that were delinquent.  
319  
(532)

320 Mr. Apgood considers his own statement of March 31, 1970,  
(533) a false statement. Mr. Apgood made a partial evaluation  
of Dinner Table as of March 31, 1970, but admitted that  
he was not able to authenticate the report because he  
was not hired for that purpose.

322 Exhibits 13-P and 14-P were patently misleading because  
(535) they are two balance sheets dated the same date, one  
with an asset value of \$1,600,000 and the other with  
an asset value of \$2,500,000 which represents a  
difference of \$900,000 on the same date. There were no  
books in existence to support these balance sheets and  
that size of a discrepancy would indicate that the  
balance sheets were patently misleading.

327 valuation based on leases to be performed in the future  
(540) is difficult. One can value the leases high or low  
328 without being fraudulent. Mr. Apgood stated that the  
(541) valuation placed in good faith could be wrong.

332(545) The following information was contained on Exhibit 13 which is the balance sheet of Universal Leasing on August 31, 1969:

1. Total assets of \$1,644,000.
2. Liabilities of \$942,000.
3. Net worth of \$702,000.
4. Shares outstanding 76,288.
5. Net profit from April 1 to August 31, 1969, was \$47,629.

The following information was contained on Exhibit 14 which is also a balance sheet for Universal Leasing on August 31, 1969:

1. Total assets of \$2,495,000.
2. Liabilities of \$1,322,000.
3. Net worth of \$714,000.
4. Shares were listed the same as Exhibit 13.
5. Net profit of \$60,000.

333(546) Exhibit 18 which is also a balance sheet of August 31, 1969, contained the following information:

1. Total assets of \$2,394,000.
2. Liabilities of \$1,780,000.
3. 66,250 shares.
4. Net profit of \$60,000.

334(547) Exhibit 23-P which is a balance sheet of November 30, 1969, showed the following information:

1. Total assets of \$2,413,000.
2. Total liabilities of \$1,852,000.
3. Net worth \$562,000.
- (4. Shares outstanding 66,250.

336  
(549) The consolidated balance sheet for November 30, 1969, showed the following:

1. Total assets \$2,754,000.
2. Total liabilities \$2,149,000.

3. Stockholders equity \$605,000.

4. Shares outstanding 31,932,000.

337 The consolidated balance sheet contains the information  
(550) for Universal Leasing, Universal Rockwell and the other subsidiaries. .

338 All of the balance sheets are incorrect including the one  
(551) of March 31, 1970, which Mr. Apgood prepared. In order to determine if one was correct, we would have to have a certified audit of the company which Mr. Apgood was not hired to do.

340 Mr. Apgood was hired to prepare a balance sheet and  
(553) income statement. When he entered the premises he found this was impossible because no books or records had been kept. During the course of the next few weeks he did the bookkeeping and the accounting for the entire previous year. He then prepared a balance sheet and income statement. It did not reflect the financial condition of the company and he submitted it with reservations and advised them the next step would be to audit the books and find out where the deficiencies exist. His balance sheet is shown as Exhibit 24.

341 Exhibit 22-D is a copy of a certified audit done by  
(554) Elmer Fox & Company.

343 Exhibit 22-D which is the certified audit contains the  
(556) following information:

1. Total of assets of \$1,359,000.
2. Total liabilities of \$967,000.
3. Stockholders equity of \$392,000.
4. Net income for the period of \$37,000.
- (5. Shares outstanding 50,000 shares.

ROBERT DALE APGOOD for defendant:

CROSS EXAMINATION by Richard H. Nebeker:

347 Exhibit 22-T was identified as a balance sheet of North  
(560) Star Marine Sales as of March 1, 1970. The assets on



this balance sheet were incorporated into Exhibit 24.

353  
(566)

Mr. Timothy did not tell Mr. Apgood anything about the merger of the two corporations and he did not know that the report he was preparing was intended to be used by Mr. Timothy to present to new investors in the Universal Rockwell stock.

356 (569)  
367 (570)

The examination of Mr. Apgood was interrupted to allow the testimony of Mark E. Eames for the purpose of identifying Exhibit 27-P which was the merger agreement between Universal Rockwell Corporation and North Star Marine. Mr. Eames also identified Exhibit 30-P as the minutes of the corporation for the meetings of May 13, 15, and 27, 1970. Mr. Eames identified Exhibit 29-P as a recission agreement of the merger between Universal Rockwell and North Star Marine dated May 27, 1970. The recission resulted from a personality conflict between Mr. Jerry Timothy and the other parties involved. Mr. Timothy had good title to all the assets he listed in the balance sheet but he misrepresented the fact that there was a cash flow requirement to service the debt of North Star Marine. At about this time, Mr. G's Gas and Goodies were also taken out of Universal Rockwell. Mr. G's Gas and Goodies did not represent any material value to the merged corporation.

368  
(571)

Mr. Apgood was called back to the stand and the cross-examination of Mr. Nebeker continued. Mr. Apgood stated that he did not know of the pending recission when his report was prepared.

369  
(572)

The report was prepared for March 31, 1970, because that was the end of the fiscal year of the corporation. Mr. Apgood subsequently found out that many of the assets were over-valued.

371 (574)  
372 (575)

Mr. Apgood was subsequently paid for his services in stock. He received 20,000 shares of stock. He valued his

ROBERT DALE APGOOD

FURTHER CROSS-EXAMINATION by Alvin I. Smith

374(578) Mr. Apgood stated the figures that he had calculated from his worksheets and which were included in the preparation of his report.

376 Mr. Apgood explained how he accounted for the differences  
(579) in the amount of assets shown on the various exhibits.

S. CRAIG HUNTER for defendant

DIRECT EXAMINATION by Walter P. Faber, Jr.:

391 Mr. Hunter first met Eames, President of Universal  
(603) Leasing in November of 1969.

392 Hunter met Jerry Timothy in January of 1970 for the first  
(604) time. In February of 1970 Hunter learned about the Universal Leasing stock as a result of a meeting between Timothy, Eames and McKay Smith. Hunter had a broker's license. Timothy and Smith came to Hunter's home and asked him if he would be interested in attending a meeting where they were going to discuss the possibility of a merger between North Star Marine and Universal Leasing.

393 Hunter attended the meeting where Eames, Smith, Timothy,  
(605) Hunter and Attorney Richard Cahoon discussed the merger of the two companies. Eames, Smith and Timothy were interested in Hunter because Hunter had a Broker's license.

394 The others mentioned were interested in getting some  
(606) brokerage support, somebody to make a market in the stock and tell brokers about it. The others involved in the merger wanted Hunter to accomplish this purpose. At the meeting Hunter received two financial statements of the Universal Leasing Company dated March 31, 1969, and November 30, 1969. These were given to him by Mark Eames. One of those was Exhibit 23-D. The other was Exhibit 22-D, prepared by Elmer Fox and Company.

395  
(607)

The meeting was held on the 10th, 11th, or 12th of February 1970, before he went to the bank for the first time to find out about the stock. He learned at the meeting that the Souvalls were in financial trouble and that the stock would be available. He went to his attorney who told him to see Don Bennett or John Langeland at the Zions First National Bank. Then he went down to see Don Bennett, who put him in touch with the Souvalls.

396  
(608)

Bennett informed Hunter he could not give any information to Hunter regarding Universal Leasing unless it was authorized by the Souvalls. Hunter contacted the Souvalls who informed him he would have to get the information about Universal Leasing, outside the fact that they were willing to sell it, from the bank. The Souvalls called over to the bank and authorized the bank to release the information to Hunter, whereupon Hunter returned to the bank and had a conversation with Bennett.

397  
(609)

Bennett told Hunter that he could not give him a sales price but that he would have to arrive at a price with the Souvalls. Bennett gave Hunter a financial statement on Universal Leasing. Hunter told Bennett he had two financial statements already which he wanted to compare with one received from the bank. At this point Exhibit 18-P was identified as an August 31, 1969, financial statement of Universal Leasing which Mr. Bennett gave to Hunter. Hunter testified that Bennett did not discuss at this time any other financial statements of Universal Leasing. Hunter told Bennett that he wanted to buy the Universal Leasing stock and did not want to buy the other assets.

398  
(610)

Hunter compared the financial statement which he received from Bennett with the ones he had and concluded that the company was in good shape and progressing in a good manner. Hunter did not know of the actual financial condition of Universal Leasing and that was in financial trouble at the time he talked with Bennett. The various assets which

were available for sale were discussed in a meeting with Alvin I. Smith, Peter Souvall, and Andrew Souvall, Craig Hunter, and possibly Reed Watkins. Hunter informed them that he was only interested in purchasing the stock. Peter Souvall felt, he said, that it would be a good idea to put all of the assets in one contract and have another contract signed at the same time in which all of the assets except the stock would be transferred back.

399  
(611)

It was intended that the assets would be transferred back to Ernie Psarras. This included their equity in their homes which was to come to Hunter and then back to Psarras and eventually would be transferred back to the Souvalls. The parties were discussing from \$60,000 to \$66,000 as a price for the stock. Hunter signed the contract to purchase the assets. He explained that he signed another contract that transferred all of the assets except the stock and the inventory on 33rd South back over to the sellers.

400  
(612)

The money received from the sale of all assets except the stock went to the bank. At the time of the signing of the first contract Hunter had not received any further information about the financial condition of Universal Leasing Corporation. About March 25, 1970, the stock was delivered to Hunter even though he had not paid for it.

401  
(613)

A note was signed by Hunter in the latter part of April, which is Exhibit 11-P. It was delivered to Hunter by Dave Brinton.

402  
(614)

Hunter signed the note at the request of Don Bennett. Mr. Bennett told him that since the stock had been transferred to him and because of possible problems with the bank examiners, they were requesting that he sign the note. It was also to evidence that Hunter was willing to pay interest on the SBA loan. Bennett told Hunter he

would not be obligated on the note itself. Hunter actually paid \$9,000 on the stock. This payment was made before the note was signed. In summer or early fall of 1970, Hunter decided not to pay the bank any more money. When he purchased the stock he felt that Universal Leasing was in good financial condition.

403  
(615)

In May, after a Certified Public Accountant, Bob Apgood, had posted the books and prepared a trial balance sheet on Universal Leasing, Hunter learned that Universal Leasing Company was not in good financial condition. Hunter learned from Mark Eames in the fall of 1970 that the Souvalls and the bank officers had a great deal of information about the financial condition of Universal Leasing at the time Hunter bought the stock which they did not relate to Hunter.

404  
(616)

After that, Hunter refused to pay any more on the purchase of the stock. Mr. Hunter never owned any stock in North Star Marine nor did he own any other stock in Universal Leasing prior to the time he received the stock from the bank.

405  
(617)

Mr. Hunter made attempts to sell the stock both through public and private means. Everyone he talked to required a current financial statement. He asked the officers of Universal Leasing for a financial statement but it was not until late May that he was able to obtain one.

406  
(618)

Hunter bought the stock because the financial condition of the company looked like it would be a good buy.

407  
(469)

Souvall told Hunter that the assets should be included in one contract because he felt it would be the easiest way of getting certain assets back to them through the Bankruptcy Court. The only thing Hunter was interested in buying was the stock but he was willing to cooperate with the Souvalls.

CRAIG HUNTER for defendant:

CROSS-EXAMINATION by Mr. Alvin I. Smith:

408(620) Hunter had experience in selling fire and casualty insurance.

409(621) In November of 1969, Hunter got his NSAD license. In 1967 or 1968 he formed an insurance agency in connection with Lamar Buckner from Ogden.

410(622) In conjunction with his insurance business, Hunter was involved in various investments. Hunter was licensed with Bel-Air Securities which dealt in over-the-counter securities.

412  
(624) Hunter was first introduced to Universal Leasing Company by McKay Smith. He represented a company called Geoupdate which was in financial difficulty and was looking for a merger.

413  
(625) This merger never took place. In February of 1970, Mr. Smith and Jerry Timothy came to Hunter's home and asked if he would attend the meeting. Hunter was advised that they were going to merge Jerry Timothy's company in with Universal Leasing.

414(626) They wanted Hunter because he had a securities brokerage license to help get their stock trading.

416(628) At the meeting Hunter was given two financial statements and was told that they were going to have a successful company.

417  
(629) They were talking about all of the entities that made up Universal Rockwell plus North Star Marine. For all intents and purposes, Universal Leasing was Universal Rockwell. Universal Rockwell held the assets of Universal Leasing.

419  
(631) Universal Rockwell would be acquiring certain assets from North Star Marine, including a sizeable boat that was listed at \$325,000, and 40,000 acres of land located in Brazil.

422 Hunter did not remember the value of these assets but  
(634) said that it was quite a sizeable dollar figure which  
would be somewhere in the area of one and one-half  
million dollars.

424 (636) Hunter was advised that Universal Rockwell stock was  
not trading at the time of the meeting.

426 (638) Hunter was told that Mr. Souvall had some Universal  
Leasing stock at the bank. Mark Eames told Hunter at the  
meeting that the Universal Leasing Company was in trouble.

427 Hunter told them that he would like to go up to the bank  
(639) and look at the stock and see whether or not it was  
available on a good basis. Hunter had no other meetings  
with Timothy and Eames prior to going to the bank. Hunter  
first asked the bank how much was wanted for the stock.  
From looking at the financial statements, he assumed it  
had some value.

428 When Hunter went to the bank for the first time, he  
(640) already had two financial statements that he had received  
at the first meeting with Eames, Timothy and Smith.

430 Hunter could not remember the dollar value of the assets  
(642) of Universal Rockwell but he did remember that it was  
generally favorable. Hunter referred to the March 31,  
1969, statement that showed current assets of \$266,000.  
It had current liabilities of \$284,000 and it had long-  
term or fixed assets that totalled \$1,359,000. The  
long-term debt was \$682,000. This meant the total net  
worth was \$391,000.

431 Hunter referred to the other balance sheet and also to  
(643) the effect of the merger with North Star Marine which  
made it approximately a \$2,000,000 corporation. Hunter  
had not made up his mind as to what he would be willing  
to pay for the Souvall stock at the bank.

432 Hunter was going to rely on the information he got at the  
(644) bank for his decision. He received a financial statement,



identified as 18-P, from the bank. The handwritten figures on 18-P are those of Mr. Hunter. Hunter compared the statement that he received from the bank with the other statements that he had obtained from Eames, Timothy, and Smith.

433 Hunter made a comparison of the balance sheet he received  
(645) at the bank and those he already had in his possession.

435 Even though Hunter was looking at financial statements  
(647) for different periods of time, he was attempting to get information on the progression of the corporation.

436 Mr. Hunter had another conversation with Mr. Eames at  
(648) which time it was explained the reason the assets had dropped was because of a gas war which affected Mr. G's Gas and Goodies.

440 After the bank gave me the financial statement, they sent  
(652) me to Souvalls to negotiate a price. At about this time, Mr. Hunter had arrived at a price he was willing to pay which was \$66,000 or \$67,000.

441 (653) There were not discussions between Hunter and the Souvalls regarding the value of Universal Leasing stock.

442 (654) There were no discussions between Hunter and the Souvalls about value of the Universal Rockwell Company. Hunter was interested in buying the stock for the purpose of selling the stock only.

444 (655) Hunter went to the bank; the bank told him to go to the Souvalls to see if they were interested in selling the stock.

(445 Hunter first went to the bank. The bank told him to go  
(656)  
446 (657) to Souvalls and see if they were interested in selling the stock. Hunter asked them if they were interested in selling it. They answered that they were interested in selling the stock and they asked Hunter if he was interested in buying it. Hunter told them that he was

interested up to that point and they said he could get the information at the bank. So he went to the bank and saw Don Bennett and went over what information Bennett had. Bennett gave him the August 31, 1969, statement and told him that the statement was all that the bank had on the stock. Then Hunter left. Before the Souvalls could go ahead with their plans for liquidation of the assets, it was necessary to get disclaimers from the Bankruptcy Court.

448 The Souvalls were trying to figure out how Hunter could  
(659) get the stock and how they could at the same time get certain assets out of the Bankruptcy Court so that they could come out the best they possibly could.

449 Hunter had not seen the inventory before the contracts  
(660) were signed.

454 Mr. Nebeker, attorney for the bank, Don Bennett, Alvin  
(665) Smith, attorney for the Souvalls, and the Souvalls with Hunter worked out a contract price of \$133,500.

467 Hunter wrote the due date of April 31, 1970, on the  
(679) Promissory Note he gave to the bank.

470 On March 25th, Hunter picked up 10,000 shares of stock  
(682) in Universal Leasing Company and had it transferred into his name the same day or the next day. New certificates in the Universal Rockwell Company were issued to him involving 4,530,000 shares. In other words, he got 4,530,000 shares for his 10,000 shares of Universal Leasing stock.

472 (684) Mr. Eames was put on out of order for the purpose of  
476 (688) identifying Exhibit 33 which was a stockholder's list of Universal Rockwell.

477 (689) Hunter instructed the transfer agent to issue the Universal Rockwell stock certificates in his name. He was planning to sell them.

478 (690) A prospective purchaser of a large block of the stock wanted it broken down into smaller certificates so he could resell them. The name of this prospective purchaser

is Don Glen. He asked for a current financial statement demonstrating that there was a good operating company.

479 Part of the reason that transaction fell through was  
(691) because when we finally got a financial statement it showed the company was broke. Mr. Glen also had other problems.

482 (694) In addition to Mr. Glen, Mr. Hunter had contacted a broker in Las Vegas, Nevada, and also a man from Chicago.

483 (695) He couldn't sell the stock because he didn't have a current financial statement. He kept pushing to get a current financial statement. He finally had to threaten Don Timothy, Secretary-Treasurer of the Corporation, with suit if he wasn't able to get a financial statement.

484 (696) Don Timothy hired an accountant who made a financial statement.

485-496 Hunter was approached by an individual from Ogden about  
(697) purchasing Universal Rockwell stock for a group who was  
(708) looking for a shell corporation. The individual dictated all of the terms of their proposal to Hunter. Hunter told him what he knew about the company and that the stock was worthless. Hunter also told him that if they still wanted to buy the stock, knowing the facts about it, he would sell it to them on their terms. He gave them the option they requested. The option was never exercised. Shortly after Hunter was served with a copy of the Complaint in June 1970, he supplied an Affidavit stating that shortly after he purchased the stock he found out it was worthless. In September 1970, he was still trying to sell the stock to other people. In that month he offered to sell half the stock for \$65,000, even though he knew the stock was worthless.

498 When Hunter first learned about the corporation, he  
(710) expected the market to be at approximately ten cents per share.

- 529(740) Hunter did not talk to Mr. Langeland about the statement. Hunter told Mr. Bennett that he was comparing the statements which he had with the one which Mr. Bennett had given to him.
- 532(743) Hunter had no agreement to share profits with Timothy, Eames or the Souvalls. Mr. Hunter felt that Mr. Bennett should have told him that the company was in trouble.
- 533(744) Hunter testified that Bennett knew that Universal Leasing was in trouble.
- 534(745) Hunter testified that the bank knew that the financial statement they gave to Hunter was false.
- 535(746) They must have known the financial statements were off because they were all different. Hunter wanted to buy the stock very badly.
- 537(748) All Hunter was interested in was the stock. At the same time Hunter signed the contract purchasing the assets, he signed another contract selling everything he purchased to Psarras except the stock and some restaurant inventory.
- 538(749) It was Hunter's understanding that the maximum he would be paying for the stock would be \$66,000. This represented the difference between the contract price and what the other assets could be liquidated for.

539 -  
540  
(750-751)

Hunter could not place a valuation on the worth of North Star Marine since he had no idea as to how the assets were valued and the majority of its assets consisted of stock in a private company that Hunter had not seen the financial statements on.

544  
(755)

Hunter was not relying on the assets of North Star Marine but rather the fact that Universal Leasing was represented as being an operating company. It was this fact which he felt would make the stock a worthwhile purchase.

545  
(756)

Eames had a company brochure prepared to describe what the company was and what it was doing. Hunter showed this brochure to various individuals he was trying to interest in purchasing the stock. He did not rely upon the brochure as a sales pitch but rather relied upon a combination of the financial statements.

547  
(758)

Exhibit 37-P which is the brochure was identified and introduced. The brochure showed illustrations of some of the assets of North Star Marine sales.

548-  
550  
(759-761)

Mr. Hunter first learned that the books had not been posted in June of 1970. Mr. Hunter believed that the bank knew the books had not been posted when they gave him the financial statements. Mr. Hunter finally learned that the bank had five financial statements even though they gave him one. It was Mr. Hunter's opinion that the bank had the five financial statements at the time and could have shown them to him. Mr. Hunter denied that Mr. Bennett showed him the financial statement represented by Exhibit 13-P. The first time Mr. Hunter saw Exhibits 13-P and 14-P was three weeks before the trial.

S. CRAIG HUNTER,

CROSS-EXAMINATION by Alvin I. Smith

553 (764) Mr. Hunter reached the conclusion that this was a good operating company from the three financial statements he had in his possession.

556 (767) Mr. Eames told Mr. Hunter that the company was doing fine.

557 (768) The essence of the information that Mr. Hunter relied on was the financial statements.

561 (772) Mr. Hunter explained how the increase in the net worth of a company as shown by two of the financial statements could be explained by an increase in investments and an increase in the total amount of leases they had.

579 -  
580  
(790-791) Eames was going to purchase part of Hunter's stock for an air-conditioner, a computer floor, a teletype and ten thousand dollars. Eames never paid the money.

585  
(796) Hunter's last attempt to sell the stock was to the group in Ogden in September.

MARK EAMES, Witness for Plaintiffs

DIRECT EXAMINATION by Richard Nebeker

602  
(813) There were certified financial statements of Universal Leasing Corporation for the year 1968 and 1969. The statement of March 31, 1969, was a certified financial statement by a CPA. Mr. Eames resigned as President of the corporation shortly after March 31, 1970.

603  
(814) Exhibits 13-P and 14-P were financial statements prepared by our accountant for management only. Universal Leasing Corporation was aware of the financial difficulties.

- 604  
(815) At the time of the preparation of Exhibit 18-P Universal Leasing was floundering trying to find out what the financial position of the company was. The company's cash position was short, the delinquency position of the company's accounts receivables was bad and the company was looking at that time for an acquisition to "bail us out of the water".
- 605  
(816) The financial statement represented by 13-P was incorrect. Mr. Anderson was not aware of the accounts receivable position of the corporation.
- 606  
(817) Mr. Eames did not give Exhibits 13, 14 or 18 to the bank. Mr. John Swenson delivered financial statements to the bank at its branch office in Spanish Fork.
- 607-  
608  
(818-819) Mr. Eames personally never gave any financial statements to Mr. Hunter. It was his understanding that these were available to the Board of Directors and that one of the directors, Mr. Don Timothy, gave the financial statements to Mr. Hunter.
- 609 (820) Exhibits 18-P and 14-P were prepared for management to have some indication as to what direction Universal Leasing was going.
- 610 (821) Management of Universal Leasing knew that Universal Leasing was in dire financial trouble. The preparation of the exhibits was an attempt on the part of the employees to find out how much trouble the corporation was really in. Mark Eames was aware that John Swenson, a vice-president, of Universal Leasing delivered one or more financial statements of Universal Leasing to the Spanish Fork Branch of Zions. The statements were inconsistent with one another.



617  
(828)

At the time of the meeting between Eames and Hunter in February of 1970, Eames knew that Universal Leasing was in dire trouble because of monies which Universal Leasing had outstanding which they were unable to collect.

618 - (829)  
619 (830)

Eames and Pete Souvall were in constant contact with each other because of the quarter of a million dollar receivable that Souvalls had with Universal Leasing and Eames was trying to collect that money. Eames did not tell Hunter about that because he had no reason to do so. Eames was hopeful that Hunter would bail the Souvalls out of the SBA loan with Zions bank thus putting the Souvalls in a financial position where they could honor their obligation to Universal Leasing. Eames said that was the whole incentive behind the whole program. Souvalls did not pay their debt to Universal Leasing. Eames didn't inform Hunter of that debt.

FURTHER DIRECT EXAMINATION by Alvin I. Smith

620 (831)

Souvalls owed Universal Leasing approximately \$300,000.

627- (838)  
630 (841)

Eames traded a computer floor, an air conditioner, and a teletype to Hunter for some Universal Rockwell stock. Eames and Hunter had a misunderstanding on \$10,000 that Hunter was to receive in addition to the other items. Eames wouldn't give Hunter the \$10,000 unless Hunter signed a lease. Hunter had to give Eames additional stock to get clear title to the equipment.

September 15, 1971

JOHN LANGELAND, Witness for Intervening Plaintiff

DIRECT EXAMINATION by Richard Nebeker

637- (8 48)  
639 (850)

Mr. Langeland, Senior Vice-President, and officer of Zions Bank, had no knowledge that any financial statements

in the files of Zions Bank were false or inaccurate. On

accuracy of the financial conditions of Universal Leasing so that he would know what he was purchasing. Only Langeland and Hunter were present on that occasion. This conversation took place between the first and second agreements that were drawn up in connection with the sale of assets to Hunter. At that time, Hunter had a financial statement in his hand and agreed that it would be a good idea. Langeland told Hunter that Zions had no real reason to have a financial statement of Universal Leasing in their files that they had to rely on. All the credit that Zions extended to Universal Leasing was based on the financial strength of the lessee. Langeland did not know where the financial statements that were in the possession of Don Bennett came from and knew that they did not have financial statements in their office.

640- (851) A few days later Mr. Langeland had a meeting with Craig  
641 (852) Hunter where Hunter told him that he had been down and had looked at the assets and the accounts. Hunter did not indicate there was anything fundamentally wrong with the Universal Leasing Company. No one besides Hunter and Langeland were at that meeting. Hunter never questioned Langeland about his own knowledge of the company and did not mention the merger of Universal Rockwell and North Star. Langeland never made any investigation about the financial condition of Universal Leasing Company or Universal Rockwell

CROSS-EXAMINATION by Walter Faber, Jr.

JOHN LANGELAND, Witness for Intervening Plaintiff

643 (854) Langeland did not discuss any of the Universal Leasing financial statements with Bennett or Hunter.

644 (855) The essence of Hunter's conversation when he came into Lang

tion of the company. This conversation prompted Langeland to advise Hunter to go and check those books and assure himself that the statements were correct. Langeland concluded from his conversation with Hunter that "as a buyer" paying a substantial amount for the stock, he was concerned at that time about the financial condition of the company that was a small part of the overall company in which he was buying the stock. Zions bank did not place any reliance on the financial strength of Universal Leasing in financing leases for them.

646  
(857)

The bank did not place any reliance on the financial strength of Universal Leasing in financing leases for them. The leases that Universal Leasing financed with the bank were "with recourse" which meant that if the lessee didn't pay, the bank could look to Universal Leasing for payment.

647- (858)  
657 (868)

Mark E. Eames was called and examined by Alvin I. Smith regarding the employees of Universal Rockwell. Mr. Smith also asked him questions about the brochure that was prepared on Universal Rockwell and Mr. Eames testified that the same was recalled and not distributed. He did not personally give the brochure to Mr. Hunter.

DONALD M. BENNETT, Witness for Intervening Plaintiff

DIRECT EXAMINATION by Richard Nebeker

659 (870)

Bennett did not have any conversations with Hunter as to whether or not Hunter would be liable on the note and did not recall how Hunter got the note. Bennett did not discuss nor agree to the changes that had been made on the note while it was out of the bank. Neither Bennett nor Langeland could find

18-P in their files.

661- (872) Bennett showed Hunter 13-P and 14-P and not the other  
662 (873) statements because Hunter was looking for the most recent  
information.

CROSS-EXAMINATION by Walter Faber, Jr.

663 (874) Don Bennett had conversations with the defendant, Hunter,  
between February 28th and March 9th, 1970, the subject  
of which he couldn't recall. The discussion that Hunter  
and Bennett had about financial information occurred prior to  
February 28th.

664- (875) Bennett does not know exactly which date the note was  
665 (876) executed or when it was brought back into the bank. Hunter  
was charged interest that would have been due on the  
\$35,000 that Psarras eventually paid the bank.

667 (878) Donald Bennett discussed two financial statements with  
Hunter he did not show Hunter the 3-31-69 statement or  
discuss anything other than the two financial statements.  
He pointed out to Hunter the discrepancies that existed  
in the two financial statements.

MARK E. EAMES for Plaintiffs

CROSS EXAMINATION by Walter P. Faber, Jr.

671 (882) Langeland, Pete and Andy Souvall, Eames and other attended  
an annual stockholders meeting of Dinner Table that was  
held November the 8th, 1969.

672- (883) At that meeting, Eames presented a letter from Universal  
673 (884) Leasing's counsel that demanded the \$50,000 be returned  
that Universal Leasing had paid to Burger-In-The-Round.  
for the franchise rights for Burger-In-The-Round. At  
that meeting Eames had a very heated conversation with  
Langeland about Universal Leasing and its position at  
that time. Langeland told Eames that Universal Leasing  
was not financially able to comply with the leasing require-

appeared to have knowledge of Universal Leasing's financial condition. Eames approached the Board of Directors of Universal Rockwell to remove the legend from Souvalls' stock. It was the decision of the Board of Directors to remove the legend because Dinner Table owed a considerable amount of receivables that were in serious default. The Board thought it was to their advantage to remove the legend so that Hunter could assist Souvalls et al. in clearing up Souvalls' obligation to Zions Bank and put them in a better position to honor their obligations to Universal Leasing.

MARK E. EAMES, Witness for the Plaintiff

REDIRECT EXAMINATION by Alvin I. Smith

683 (894) Eames recited three examples of leases that he had discussed with Souvall between March 9, 1970 and February 9, 1971, because Souvalls and their companies had guaranteed them and they were in default. Eames discussed the Fourth South location with Souvall because the equipment Universal Leasing took under lease never existed.

684 (895) Eames felt Exhibit 44-P in which Universal Leasing received the exclusive rights to franchise Burger-In-The-Round in California in exchange for the \$50,000 cash that Universal Leasing had paid was accepted by Universal Leasing as a settlement because they had no other choice since Dinner Table was bankrupt.

MARK E. EAMES, Witness for Plaintiffs

RECROSS-EXAMINATION by Walter P. Faber, Jr.

687 (898) 41-P was admitted as evidence. It was a satisfaction of judgment where Universal Leasing had obtained a \$50,000 judgment against Pete and Andy Souvall. This was on only one of the leases and there were others which they had guaranteed

MARK E. EAMES, Witness for Plaintiff

REDIRECT EXAMINATION by Alvin I. Smith

687 (898) To name the leases that Souvall and their companies  
were in default on, Eames would have had to go to the  
bank and get the IBM run. There were several.

PETER W. SOUVALL, Witness for the Plaintiff

DIRECT EXAMINATION by Alvin I. Smith

688 (899) Since March 1970 Eames had not made any demand on him  
for any lease guaranteed by S & F Supply Company or  
Burger-In-The-Round or any other company. 44-P  
was a settlement of the dispute between Universal  
Leasing and Dinner Table over the Exhibit 43-P.

PETER W. SOUVALL, Witness for Plaintiff

CROSS EXAMINATION by Walter P. Faber, Jr.

689 (900) During the year proceeding the trial, Souvall had a number  
of conversations with Eames about the problems between  
Dinner Table and S & F Supply Company and Universal  
Leasing. The \$50,000 judgment that Universal Leasing got  
was not on the California matter.

## ORDER

(TITLE OF COURT AND CAUSE)

The above entitled cause came on for trial commencing September 7, 1971, before the Honorable Marcellus K. Snow, District Judge, sitting with a jury, the plaintiffs being represented by Alvin I. Smith, Esq., the intervening plaintiff being represented by Richard H. Nebeker, Esq. and the defendant being represented by Walter P. Faber, Jr., Esq., and at the conclusion of testimony, the parties made certain motions and voluntarily agreed to dismiss certain of the causes of action contained in the defendant's Counter-claim. The Court ruled as of September 17, 1971, and before the jury retired to answer special interrogatories propounded to them by the Court, as follows:

### IT IS ORDERED:

1. The defendant's second counter-claim against S & F Supply Company is dismissed with prejudice and upon the merits, upon motion of the defendant.
2. The defendant's third counter-claim against Burger-In-The-Round is dismissed with prejudice and upon the merits, upon motion of the defendant.
3. The defendant's fourth counter-claim against the plaintiffs, Andrew W. Souvall and Peter W. Souvall, is dismissed with prejudice and upon the merits, upon motion of the defendant.
4. The motion of the defendant for a directed verdict, no cause of action, on the plaintiffs' complaint and the intervening plaintiff's complaint is denied.



5. The motion of the plaintiffs and intervening plaintiff for a directed verdict, no cause of action, on the defendant's counter-claim for fraud is granted on the basis that no proof of general or punitive damages was shown, but the defendant is entitled to the submission of the issue of fraud to the jury as an affirmative defense.

6. The defendant is ordered and directed to deliver to the Court the Promissory Note of Andrew W. Souvall and Peter W. Souvall dated March 31, 1969, payable to Universal Leasing Corporation, which note was assigned to the defendant.

Dated this 27th day of September 1971.

BY THE COURT:

/s/ Marcellus K. Snow

- 825 Defendant objected to the Court's failure to give an instruction on agency, whether the intervening plaintiff was the agent of the plaintiffs for the giving of information to defendant.
- 826 Defendant takes exception with the last paragraph of instruction No. 17 in that it is not in conformity with Section 61-1-22 of the Utah Code Ann. as set forth in Instruction No. 15. Defendant takes specific exception to Instruction No. 18 in that it does not fairly set forth the evidence introduced and is misleading and inaccurate. Defendant takes exception to Instruction No. 19 in that the Instruction is inconsistent and contrary to Section 61-1-22 of the Utah Code Ann. Defendant takes specific exception to Instruction No. 21 as being biased in favor of plaintiffs and intervening plaintiffs. Defendant takes specific exception to Instruction No. 31 in that it incorrectly states the burden of proof as required under Section 61-1-22.
- 827 Defendant takes exception to the tenor of the instructions which deal with the burden of proof in the interpretation of Section 61-1-22

of the Utah Code Anno. in that they incorrectly state the burden of proof. Defendant takes specific exception to the special interrogatories submitted to the jury by the Court in that said interrogatories were inaccurate and representing the testimony and are bias and in favor of plaintiffs and intervening plaintiffs.

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## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### (TITLE OF COURT AND CAUSE)

The above entitled cause came on for trial commencing September 7, 1971, before the Honorable Marcellus K. Snow, District Judge, sitting with a jury, the plaintiffs being represented by Alvin I. Smith, Esq., the intervening plaintiff being represented by Richard H. Nebeker, Esq. and the defendant being represented by Walter P. Faber, Jr., Esq., and trial having continued from day to day until September 17, 1971, at which time the jury retired to consider and answer special interrogatories propounded to them by the Court pursuant to Rule 49 of the Utah Rules of Civil Procedure, and the jury having returned its answers to said interrogatories and having been discharged September 17, 1971, and certain issues raised by the pleadings having been voluntarily dismissed by the parties or ruled upon by the Court, the Court makes and enters its

### FINDINGS OF FACT

1. The assets sold by the plaintiffs to the defendant under the agreement of March 9, 1970 had been pledged to Zions First National Bank as security for a loan made by it and the Small Business Administration to plaintiffs.
2. The Promissory Note payable to Zions First National Bank in the amount of \$133,500 dated March 30, 1970, and due April 31, 1970, executed by the defendant, S. Craig Hunter, is an addendum and supplement to the agreement dated March 9, 1970, between the plaintiffs and the defendant.
3. The defendant is obligated to the plaintiffs and intervening plaintiff jointly and severally, for the unpaid principal balance of \$80,247.31, plus

and note. The beneficial owner of said judgment entered herein is the intervening plaintiff.

4. A reasonable attorneys' fee to be awarded jointly and severally to the plaintiff and intervenor is the sum of \$12,329.30.

5. The defendant failed to introduce any evidence in support of his second cause of action in his Counter-claim to Intervenor's Complaint.

Based upon the special interrogatories as answered by the jury and the foregoing Findings of Fact, the Court makes and enters the following:

#### CONCLUSIONS OF LAW

1. Plaintiffs and intervening plaintiff were not defrauded by the defendant, S. Craig Hunter, in entering into the agreement of March 9, 1970, and delivering the shares of stock to defendant as alleged in plaintiffs' and intervening plaintiff's complaints.

2. The defendant was not defrauded by the plaintiffs in entering into the agreement of March 9, 1970, to buy the assets and stocks therein listed.

3. The defendant was not defrauded by the intervening plaintiff in entering into the agreement of March 9, 1970, to buy the assets therein listed or in the execution of the Promissory Note dated March 30, 1970.

4. The second cause of action in defendant's Counter-claim to Intervenor's complaint shall be dismissed with prejudice and upon the merits.

#### JUDGMENT

WHEREFORE, by virtue of the law and by reason of the premises

IT IS ORDERED, ADJUDGED AND DECREED that plaintiffs and intervening plaintiff, jointly and severally, have and recover from said defendant, S. Craig Hunter, the sum of \$80,247.31 principal, \$14,962.49 interest and \$12,329.30 attorneys' fees and costs expended, together with interest at the rate of 8% per annum from the date hereof until paid.

Dated this 27th day of September 1971

BY THE COURT

/s/ Marcellus K. Snow

## MOTION FOR A NEW TRIAL

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### (TITLE OF COURT AND CAUSE)

COMES NOW the above named defendant by and through his attorney, Walter P. Faber, Jr., and respectfully moves the Court to set aside the findings of fact and conclusions of law and judgment entered thereon on the 27th day of September 1971 and to grant defendant a new trial on the grounds that:

1. The evidence presented precluded the Court from dismissing defendant's counter-claim.
2. Substantial and prejudicial error was committed by the Court in excluding from the evidence defendant's proposed Exhibit 7, entitled SBA loan application.
3. Substantial and prejudicial error was committed by the Court in denying defendant's motion to dismiss intervening plaintiff's cause of action in that plaintiffs' and intervening plaintiff's cause of action were one and the same.
4. Substantial and prejudicial error was committed by the Court in denying the defendant's motion to dismiss plaintiffs' and intervening plaintiff's cause of action of fraud in that plaintiffs and intervening plaintiff had failed to carry their prima facie burden.
5. Certain of the instructions submitted to the jury over the objections of defendant were biased and prejudicial in favor of the plaintiffs and intervening plaintiff, and furthermore were unfounded in law.
6. Certain of defendants proposed instructions were wrongfully excluded to the substantial prejudice of defendant.
7. The interrogatories submitted to the jury over defendant's objection were both in whole and in part prejudicial and biased in plaintiffs' and intervening plaintiff's favor and were unfounded in law.

Defendant represents that any of the above grounds standing alone is sufficiently prejudicial against defendant as to warrant granting defendant's motion for a new trial. Therefore the Court should proceed in accordance

with the Utah Rules of Civil Procedure and grant defendant's motion for a new trial.

Dated this 6th day of October 1971

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/s/ Walter P. Faber, Jr.

845 Motion for new trial denied by the Court.